

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

SAGENT TECHNOLOGY, INC.

\*

Plaintiff

\*

v.

\*

Civil Action No. JFM-02-2505

MICROS SYSTEMS, INC., et al

\*

Defendants

\*

\* \* \* \* \*

**SAGENT TECHNOLOGY, INC.'S MOTION IN LIMINE  
TO EXCLUDE PAROL EVIDENCE**

Sagent Technology, Inc. ("Sagent"), by and through undersigned counsel, pursuant to Fed. R. Evid. 104(a), hereby moves *in limine* to exclude parol evidence it is anticipated Micros Systems, Inc. ("Micros") may offer at trial. In support of its motion, Sagent states as follows:

1. This case arises from Micros' breach of its written contract with Sagent for the purchase of computer software and related maintenance. Based on the defenses and allegations Micros has raised to date, as well as the discovery pursued in this case, Sagent anticipates that Micros will attempt to introduce into evidence at trial oral statements allegedly made by Sagent representatives indicating that Sagent had agreed to accept in return for a full refund to Micros the software Micros had contracted to purchase from Sagent if Micros was unable to resell or otherwise use the software.

2. Sagent denies that any such statements were ever made and no writing reflects that the notion of a "full refund" was ever discussed – let alone agreed to – by the parties.

3. Any alleged agreement that Micros could return the software to Sagent for a full refund if it could not resell or otherwise use the software is of such import that it would have

been reflected in the written contract – or at least in prior or subsequent documentation – had the parties reached agreement on this issue. As neither the written contract between the parties nor any other document reflects such an agreement, parol evidence of the existence of such an agreement is not admissible under the "consistent additional" terms exception to the Uniform Commercial Code ("UCC"), codified at Md. Code Ann. Com. Law I Art. § 2-202(b).

4. As parol evidence of any such alleged agreement seeks not to interpret any provision of the clear and unambiguous written contract between the parties, but to add terms that are inconsistent with that contract, the evidence is not admissible to explain or supplement a "course of dealing" between the parties, pursuant to § 2-202(a) of the UCC.

5. As the underlying contract between the parties is subject to – and satisfies – the statute of frauds, any modification to that contract must also be in writing. As set forth above, not a single writing reflects that the parties ever discussed – let alone reached agreement on – the notion that Micros could return for a full refund the software it had contracted to purchase from Sagent if Micros was unable to resell or otherwise use the software.

WHEREFORE, for the foregoing reasons and those set forth in the Memorandum of Law filed herewith in support of this motion, which is adopted and incorporated herein by reference, Sagent Technology, Inc. respectfully requests that the Court enter an Order prohibiting Micros Systems, Inc. from offering into evidence at trial, or otherwise making reference to, any oral statements allegedly made by any Sagent representative that suggests that Sagent had agreed to accept the software from Micros in return for a full refund if Micros was unable to resell or otherwise use the software. A proposed Order is attached hereto.

Respectfully submitted,

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Counsel for Sagent Technology, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31st day of March, 2003, a copy of the foregoing Sagent Technology, Inc.'s Motion In Limine to Exclude Parol Evidence was filed and served electronically on all counsel of record.

Scott H. Phillips  
Scott H. Phillips

(B0329493.WPD;1)